

# **Exhibits Referenced in the Declaration of Debra Kane**

## **Part 2**

SCHERING CORPORATION

GALLOPING HILL ROAD

KENILWORTH, N. J. 07033

CABLES: SCHERING KENILWORTH

TELEX: 138316

138280

TELEPHONE: (908) 298-4000

November 16, 1998

RECEIVED

NOV 17 1998

TRADE FINANCIAL SERVICES

Edward S. Curran Jr., R.Ph.  
Vice President, Pharmaceutical Relations  
Aetna Pharmacy Management  
400-1 Totten Pond Road  
Waltham, MA 02154

Dear Mr. Curran:

Enclosed is your copy of the countersigned original of the Addendum to Agreement #SR4960055 between Aetna Pharmacy Management and Schering Corporation.

Thank you for your support of the Schering/Key product line. We look forward to a continued mutually beneficial relationship with Aetna Pharmacy Management.

Sincerely,



John Cheslock  
Contracts and Pricing

c:Cathy Moriarty

Defendants' Exhibit

2902

01-12257 - PBS

EXHIBIT A-1 — ~~H770~~

For the designated contract period, Company agrees to reimburse Aetna Pharmacy Management in accordance with this Agreement, based on actual dispensing of Company Products.

1. If listed by Aetna Pharmacy Management on the published Aetna Pharmacy Management Formulary of the Members which it represents, which is communicated to Participating Affiliate Health Plans and from time to time, then Company agrees to rebate to Aetna Pharmacy Management as follows:

Base/Formulary Rebate is calculated by multiplying Schering Product Volume by Base/Formulary Rebate Percentage. Schering Product Volume for a particular product is defined as utilization of that Product by Eligible Members in Participating Affiliate Health Plans multiplied by that Product's Net Direct Price.

Market Share Rebate

Market Share Rebate is calculated by multiplying Schering Product Volume times Additional Rebate (as identified in column 'c' of Formulary Rebate Schedule), times the number of Performance Tiers achieved.

A Performance Tier is achieved each time Schering product market share exceeds the applicable Base Market Share by the full number of market share points (as identified in column 'b' of Formulary Rebate Schedule).

In no event will the combination of Base Rebate (as identified in column 'a' of Formulary Rebate Schedule) plus Market Share Rebate (defined above), exceed the Maximum Rebate (as identified in column 'd' of Formulary Rebate Schedule).

If Schering Product Market Share does not exceed Base Market Share, the Base/Formulary Rebate will apply without penalty.

Product Market Definition which will be used in determining the Market Share Rebate is defined on Attachment D.

Tiers

95-4

EXHIBIT A-1 DISCOUNT SCHEDULE FOR HMO BUSINESS					Base ms	Tier min
Company Product	Base/Formulary Rebate	% Points Above Base Market Share	Additional Discount	Maximum Discount		
DIPROLENE	X 11%	2%	1%	15%	31	33
ELOCON	X 11%	2%	1%	15%	46	48 5
LOTRISONE	X 8%	2%	1%	10%	41	43 4
IMDUR	X 10%	2%	1%	15%	57	59 6
INTRON	X 3%	N/A	N/A	3%	-	-
K-DUR 20 meq	X 11%	2%	1%	15%	52	54 6
NITRO-DUR	X 20%	2%	1%	25%	53	55 6
NORMODYNE	X 21%	2%	1%	25%	73	75 8
UNI-DUR	✓ 11%	2%	1%	15%	1	3 6
PROVENTIL Repetabs	✓ 10%	2%	1%	15%	38	40 4

\* Incremental discount is based on 1% additional discount points for each 2% increase in total Rx market share above Base Market Share.

If listed by Aetna Pharmacy Management on the published Aetna Pharmacy Management Formulary of the Members which it represents, which is communicated to Participating Affiliate Health Plans and from time to time, then Company agrees to rebate to Aetna Pharmacy Management as follows:

DISCOUNT SCHEDULE FOR HMO BUSINESS	
COMPANY PRODUCT	% REBATE OFF NET DIRECT PRICE
THEO-DUR	X 12%

EXHIBIT A-2

*mg choice*

For the designated contract period, Company agrees to reimburse Aetna Pharmacy Management in accordance with this Agreement, based on actual dispensing of Company Products.

1. If listed by Aetna Pharmacy Management on the published Aetna Pharmacy Management Formulary of the Members which it represents, which is communicated to Participating Affiliate Health Plans and from time to time, then Company agrees to rebate to Aetna Pharmacy Management as follows:

Base/Formulary Rebate is calculated by multiplying Schering Product Volume by Base/Formulary Rebate Percentage. Schering Product Volume for a particular product is defined as utilization of that Product by Eligible Members in Participating Affiliate Health Plans multiplied by that Product's Net Direct Price.

Market Share Rebate

Market Share Rebate is calculated by multiplying Schering Product Volume times Additional Rebate (as identified in column 'c' of Formulary Rebate Schedule), times the number of Performance Tiers achieved.

A Performance Tier is achieved each time Schering product market share exceeds the applicable Base Market Share by the full number of market share points (as identified in column 'b' of Formulary Rebate Schedule).

In no event will the combination of Base Rebate (as identified in column 'a' of Formulary Rebate Schedule) plus Market Share Rebate (defined above), exceed the Maximum Rebate (as identified in column 'd' of Formulary Rebate Schedule).

If Schering Product Market Share does not exceed Base Market Share, the Base/Formulary Rebate will apply without penalty.

Product Market Definition which will be used in determining the Market Share Rebate is defined on Attachment D.

"Formulary" as used herein shall mean products which are reimbursed if included in a published formulary/prescribing guidelines and distributed to medical providers.

Tiers

EXHIBIT A-2					Base MS	N/A Tier
DISCOUNT SCHEDULE FOR MANAGED CHOICE BUSINESS						
Company Product	0 Tier Base/Formulary Rebate	Tier Step % Points Above Base Market Share	Discount Step Additional Discount	Maximum Discount		
DIPROLENE	X 9%	2%	0.5%	15% 34	34	36
ELOCON	X 9%	2%	0.5%	15% 44	44	46
LOTTRISONE	X 5%	2%	0.5%	10% 42	42	44
IMDUR	X 8%	2%	0.5%	15% 62	62	64
INTRON	X 3%	N/A	N/A	3%	-	-
K-DUR 20 mEQ	X 9%	2%	0.5%	15% 58	58	60
NITRO-DUR	X 15%	2%	0.5%	25% 53	53	55
NORMODYNE	X 18%	2%	0.5%	25% 68	68	70
UNI-DUR	X 9%	2%	0.5%	15% 2	2	4
PROVENTIL Repetabs	X 8%	2%	0.5%	15% 31	31	33

\* Incremental discount is based on 0.5% additional discount points for each 2% increase in total Rx market share above Base Market Share.

If listed by Aetna Pharmacy Management on the published Aetna Pharmacy Management Formulary of the Members which it represents, which is communicated to Participating Affiliate Health Plans and from time to time, then Company agrees to rebate to Aetna Pharmacy Management as follows:

DISCOUNT SCHEDULE FOR MANAGED CHOICE BUSINESS	
COMPANY PRODUCT	% REBATE OFF NET DIRECT PRICE
THEO-DUR	12%

*MD 1/1/06*

*SR 4960035*

# EXHIBIT D

## MARKET DEFINITIONS

### A. TOPICAL STEROID MEDIUM POTENCY

ELOCON  
VALISONE  
Synalar  
Aristocort  
Hytone  
Westcort

4. Kenalog  
Topicort LP  
Cultivate  
Aclovene  
Dermatop

*Products X'd off  
are already included  
on a existing agreement*

### B. ORALLY INHALED STEROID

VANCERIL  
Aerobid/M  
Flovent  
Beclomethasone Dipropionate Oral 84 micrograms\*

Azmacort  
Beclovent  
Budesonide\*

*SR 4950055*

### C. XANTHINE TABLET/CAPSULE

THEO-DUR  
UNI-DUR  
Slobid  
Theop-24  
Uniphyll

Slophylline  
Theolair  
Theochron

### D. NASALLY INHALED STEROID

VANCENASE AQ/POCKETHALER  
Beconase AQ/Inhaler  
Nasalide  
Nasal crom  
Flonase  
Decadron  
Beclomethasone Dipropionate Nasal 84 micrograms\*

Nasacort  
Rhinocort  
Dexacort

### E. ANTIHISTAMINE TABLET/CAPSULE

CLARITIN/D  
Histmanal  
Seldane/D

*Zyrtec Ede BSC  
Allegra BSC Ede  
ALL SEDATING ANTIHISTAMINES  
Ede BSC*

### F. TRANSDERMAL NITROGLYCERIN

NITRO-DUR  
Nitrodisc  
Deponit

Transdermal-Nitro  
NTS  
Minitran

**G. LONG-ACTING NITRATES TABLET/CAPSULE**

IMDUR /  
Monoket

Ismo

**H. POTASSIUM CHLORIDE TABLET/CAPSULE**

K-DUR 10/20mEq /

K-Tab

Micro-K

Ten-K

Koran-CI

K-Loq

Klotrix

Slow-K

Klor-Con 8/10

K-Lease

K-Norm

**I. ALPHA/BETA BLOCKERS**

NORMODYNE /

Trandate

**J. TOPICAL STEROID HIGH POTENCY**

DIPROLENE /

DIPROSONE

Temovate

Ultravate

Maxivate

Cyclocort

Poocort

Topicort

Lidex/B

**K. TOPICAL ANTIFUNGAL SINGLE/COMBO**

LOTRISONE /

LOTRIMIN

Spectazole

Monistat-Derm

Oxistat

Exelderm

Nixoral

Nizoral

Naftin

Loprox

Mycellex

Lamisil

\*SHALL BE INCLUDED IN THE MARKET DEFINITION UPON FDA APPROVAL.



	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx'	Market Share	C/O 4Q95 Rx'	Market Share
Elocon ✓	3,039	46.01%	3,850	43.77%	3,203	40.16%
Aclovate	531	46	905		800	
Aristocort	114		65	44%	105	
Cutivate	240		471		435	
Dermatop	133		169		229	
Hytone	232		502		577	
Kenalog	54		99		187	
Synalar	74		139		196	
Topicort	39		59		89	
Valisone	50		184		256	
Westcort	2,099		2,353		1,898	
	6,605		8,796		7,975	

40%

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx'	Market Share	C/O 4Q95 Rx'	Market Share
Uni-Dur ✓	74	0.84%	107	1.62%	147	1.39%
Slobid	2,007	1	1,410	2	2,030	
Slophylline	51		44		69	
Theo-24	467		484		913	
Theochron	1,371		823		1,421	
Theolaire	213		116		363	
Theo-Dur	3,456		2,446		4,346	
Uniphyl	1,164		1,161		1,263	
	8,803		6,591		10,552	

10%

NOT for HMO MC

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx'	Market Share	C/O 4Q95 Rx'	Market Share
Claritin ✓	19,597	42.17%	34,351	60.51%	29,880	60.20%
Hismanal	3,910		4,047		3,907	
Seldane	23,869		18,372		15,847	
	46,476		56,770		49,634	

#2 - missing Claritin D

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx'	Market Share	C/O 4Q95 Rx'	Market Share
Nitro-Dur ✓	2,135	52.53%	845	52.98%	4,475	43.63%
Deponit	369		194		1,580	
Minitran	684	53	236	53	1,756	
Nitrodisc	13		7		65	
NTG	43		24		128	
Transdermal-Nitro	820		289		2,252	
	4,064		1,595		10,256	

44%

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx's	Market Share	C/O 4Q95 Rx's	Market Share
Imdur ✓	565	57.48%	1,118	62.21%	3,510	51.50%
Ismo	340	57	483	62	2,354	52 <sup>9/10</sup>
Monoket	78		196		951	
	983		1,797		6,815	

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx's	Market Share	C/O 4Q95 Rx's	Market Share
K-Dur ✓	6,849	51.65%	3,851	57.64%	12,655	52.68%
K-Tab ✓	414	52	322	58	1,257	53 <sup>9/10</sup>
K-Lor	14		17		68	
K-Lease	1		2		10	
K-Norm	9		9		34	
Klor-Con 8/10	4,320		1,063		3,550	
Klotrix	99		113		408	
Kaon-Cl	94		82		539	
Micro-K	1,038		791		3,979	
Slow-K	349		426		1,484	
Ten-K	74		5		40	
	13,261		6,681		24,024	

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx's	Market Share	C/O 4Q95 Rx's	Market Share
Normodyne ✓	1,616	72.96%	1,236	68.21%	2,228	70.13%
Trandate	599	73	576	68	949	78 <sup>10/10</sup>
	2,215		1,812		3,177	

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx's	Market Share	C/O 4Q95 Rx's	Market Share
Diprolene ✓	2,063	30.96%	3,199	34.46%	2,841	28.11%
Cyclocort	405	31	340	34	476	28 <sup>9/10</sup>
Diprosone	41		133		171	
Lidex	464		741		921	
Maxivate	11		35		41	
Psorcon	886		1,080		1,119	
Temovate	1,606		1,989		2,344	
Topicort	578		759		1,026	
Ultravate	609		1,007		1,167	
	6,663		9,283		10,106	

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx's	Market Share	C/O 4Q95 Rx's	Market Share	
Lotrisone	4,702	40.83%	5,491	41.74%	5,868	41.44%	41%
Exelderm	203		290		278		
Lamisil	749	41	1,782	42	2,044		
Loprox	901		685		911		
Lotrimin	32		118		130		
Monistat-Derm	28		15		97		
Mycelex	74		1		45		
Oxistat	263		369		446		
Naftin	274		344		369		
Nizoral	3,543		3,143		2,825		
Spectazole	746		917		1,147		
	11,515		13,155		14,160		

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx's	Market Share	C/O 4Q95 Rx's	Market Share	
Proventil Repetabs	1,790	37.72%	1,394	30.54%	2,039	35.63%	36%
Alupent	7		18		42		
Brethaire	0	38	0	31	0		
Bricanyl	1,142		895		973		
Metaprel	78		58		69		
Proventil Tablets	1,045		727		1,000		
Ventolin	400		758		733		
Volmax	284		715		866		
	4,746		4,565		5,722		

HMO

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Ultravate ✓	609		1,007		1,167	
	6,663		9,283		10,106	

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Exelderm -	203		290		278	
Lamisil /	749	41	1,782	42	2,044	
Loprox /	901		685		911	
Lotrimin -	32		118		130	
Monistat-Derm -	28		15		97	
Mycelex -	74		1		45	
Oxistat -	263		369		446	
Naftin -	274		344		369	
Nizoral /	3,543		3,143		2,825	
Spectazole /	746		917		1,147	
	<u>11,515</u>		<u>13,155</u>		<u>14,160</u>	

41%

	HMO 4Q95 Rx's	Market Share	MC 4Q95 Rx'	Market Share	C/O 4Q95 Rx'	Market Share
Proventil Repetabs	1,790	37.72%	1,394	30.54%	2,039	35.63%
Alupent /	7		18		42	
Brethaire	0	38	0	31	0	
Bricanyl /	1,142		895		973	
Metaprel /	78		58		69	
Proventil Tablets /	1,045		727		1,000	
Ventolin -	400		758		733	
Volmax -	284		715		866	
	<u>4,746</u>		<u>4,565</u>		<u>5,722</u>	

36%

## EXHIBIT A

The following discounts for Claritin and Claritin D are contingent upon (a) Healthcare Organization listing Claritin and Claritin D along with, at Healthcare Organization's option, either Seldane and/or Seldane D or Hismanal, as the only products on the HMO and Managed Choice \*closed National Formulary in the non-sedating antihistamine and antihistamine/decongestant categories, and (b) Healthcare Organization's HMO and Managed Choice plans adopting \*closed National Formulary. If at any time during the term of this Agreement both (a) and (b) in the preceding sentence are not in effect, then such discounts shall not be available for Healthcare Organization, and the parties shall renegotiate such discounts in good faith.

PRODUCT	%OF CURRENT NET DIRECT PRICE
Claritin	12%
Claritin D	21% <i>Higher Disc</i>

*Discount  
BASE SHARE  
TIER*

The following discounts for Proventil, Vancenase, Vancenase/AQ and Vanceril, are contingent upon (a) Healthcare Organization listing these products as the exclusive albuterol inhaler, exclusive beclomethasone dipropionate/monohydrate nasal inhaler, and the exclusive beclomethasone dipropionate inhaler on the HMO and Managed Care \*closed National Formulary in the corresponding therapeutic categories and (b) Healthcare Organization's HMO and Managed Choice plans adopting Healthcare Organization's \*closed National Formulary. If at any time during the term of this Agreement (b) in the preceding sentence is not in effect, then such discounts shall not be available for Healthcare Organization, and the parties shall renegotiate such discounts in good faith. If at any time during the term of this Agreement only (b) in the first sentence of this paragraph is in effect and (a) is not, then the discounts available to Healthcare Organization for Proventil, Vancenase/AQ, and Vanceril, shall be set forth of the adjusted discount schedule.

PRODUCT	%OF CURRENT NET DIRECT PRICE
Proventil Inhaler	25%
Vancenase/AQ	25% <i>Higher</i>
Vanceril Inhaler	25% <i>Disc.</i>

*BASE SHARE  
TIER*

bc50824a

-17-

## EXHIBIT A

one or more of the following three conditions occurs, then the corresponding discounts will be adjusted as follows:

LEFT MSG FOR BETSY. RE: IF MC FORMULA BELOW IS BKN SET LOWER DISCOUNT.

PRODUCT	ADJUSTED DISCOUNT
Claritin <i>see addendum 85% 2B97</i>	8%
Claritin D <i>see addendum 85% 2B97</i>	18%
Proventil Inhaler	20%
Vancenase/AQ	20%
Vanceril Inhaler <i>see addendum 85% of 1997</i>	20%

OTHER DISCOUNTS 11/7/97

Lower Disc

1) Healthcare Organization's market shares for the aforementioned Schering Products fall below Healthcare Organization's Base Market Share for the Market Share for the previous quarter for such Products (determined on a product by product basis).

2) Effective January 1, 1996, the Managed Choice market share for the aforementioned Schering Products is 5 or more market share points below the HMO market share.

Don't have to update CONTRACT

3) Hard computer edits noting the non-reimbursable status of competitive non-formulary products are not in place by dates listed below:

Just review from qtr to qtr.

## HMO

4 plans by 11/95  
50% of membership by 6/96  
70% of membership by 12/96  
100% of membership by 7/97

This applies only to Claritin/D  
The others have to get the lower discount  
MANAGED CHOICE  
50% of membership by 3/97  
85% of membership by 12/97

If such hard computer edits are not in place by such date, then, at Healthcare Organization's request upon Health Organization demonstrating best efforts to achieve such hard computer edits, Company will consider, in its sole discretion, whether to modify such hard computer edit requirements. Company shall not be required to make any such modifications.

Healthcare Organization will communicate Formulary Status in the non-sedating antihistamine class through published formulary documents by 1/1/96.

Healthcare Organization will address Schering Corporation product positioning (specifically Claritin and Claritin D) in Health Partners-a Minnesota Health Plan organization for which Healthcare Organization provides prescription services.

\*closed formulary means that non-formulary products are not reimbursed and plan members will have a 100% co-pay.

\*\*computer edits will dictate no reimbursement for non-formulary products.

9/24 Frank spoke to Brown & said

bc50824a

-18-



## PURCHASE AGREEMENT

This Purchase Agreement is between Harvard Pilgrim Health Care, Inc.-Harvard Staff, ("Harvard"), having a place of business at 93 Worcester Street, Wellesley, MA 02481 and Schering Corporation ("Schering"), a Delaware corporation, having a place of business at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033.

This Agreement sets forth the terms and conditions pursuant to which Schering will provide pricing to Harvard staff model health maintenance organization (the "Harvard Staff Model HMO") based, in part, on the actual dispensing of those Schering products specified in Exhibit B ("Products") to Eligible Members (as defined below) by the Harvard Staff Model HMO.

Harvard and Schering agree as follows:

### ARTICLE 1. DEFINITIONS:

1.1 "Eligible Member" as used herein shall mean an individual enrolled in the Harvard Staff Model HMO; *provided, however*, that "Eligible Members" shall not include individuals who are also enrolled in other organizations that either (i) purchase any of the Products other than pursuant to this Agreement; or (ii) receive rebates based on utilization of the Products by any such individual.

1.2 "Formulary" as used herein shall mean a listing of the drugs Harvard has reviewed, approved and recommended for use at the Harvard Staff Model HMO.

1.3 "Net Direct Price" as used herein shall mean the price published from time to time by Schering as its net direct price for each Product.

### ARTICLE 2. PRODUCT SALE

2.1 **Sale of Product.** Schering shall make the Products available to the Harvard Staff Model HMO through Cardinal Distribution, Inc. and AmerisourceBergen (the "Prime Vendors"). Harvard shall notify Schering in writing of any change to its Prime Vendor(s), which Prime Vendor(s) shall be mutually acceptable to Harvard and Schering. Schering shall report to the Prime Vendor(s) the pricing to which the Harvard Staff Model HMO is entitled for the Products pursuant to this Agreement. The actual price for the Products paid by the Harvard Staff Model HMO to the Prime Vendor(s) shall be as agreed upon by Harvard and its Prime Vendor(s). See attached wholesaler sheet.

2.2 **Product Returns.** All Product returns are subject to Schering's Institutional Returned Goods Policy attached hereto as Exhibit A.

2.3 **Schering Warranties and Covenants.** Schering warrants that all Product sold to the Harvard Staff Model HMO pursuant to this Agreement conforms to the descriptions set forth in each such Product's respective labeling provided that such units of the Products are used by the Harvard Staff Model HMO in accordance with such labeling.

### ARTICLE 3. OBLIGATIONS OF HARVARD STAFF:

3.1 **Formulary.** In order to obtain the discounted pricing on each Product as detailed in Exhibit B, the Harvard Staff Model HMO must list such Product on its Formulary with the Formulary status for such Product detailed in Exhibit B. In the event the Harvard Staff Model HMO fails to satisfy the Formulary listing requirements established pursuant to this Section 3.1 for any Product, the Harvard Staff Model HMO will not be entitled to and shall not receive the discounted pricing for such Product detailed in Article 4.

3.2 **Own Use.** Harvard hereby warrants and agrees that all Product purchased pursuant to this Agreement shall be utilized solely by the Harvard Staff Model HMO for its "own use" as that term is defined by the United States Supreme Court in Portland Retail Druggists' Association, Inc. v. Abbott Laboratories et. al, 425 U.S. 1 (1976). Harvard acknowledges and agrees that Schering is not required to provide a discount for any Product sold, used or dispensed to other than for the Harvard Staff Model HMO's "own use" as described in this Section 3.2.

3.2 **Audit.** Harvard will use commercially reasonable efforts to institute and conduct on a regular basis random audits of the Harvard Staff Model HMO to ensure that actual dispensing of the Products complies with the terms of this Agreement, including the restrictions of Section 3.2 hereof. Adjustments as a result of such audits shall be refunded to Schering no later than thirty (30) days after completion of such audit. Harvard shall use commercially reasonable efforts to keep and maintain accurate books, records and files with respect to the Products, any reports submitted to Schering as part of the random audits completed pursuant to this Section, and all information relating to the purchase and dispensing of the Products pursuant to this Agreement. Harvard agrees that Schering shall have the right to conduct inspections and/or audits of Harvard's and/or the Harvard Staff Model HMO's books, records, and files from time to time, and that within ten (10) days following Harvard's receipt of a written request from Schering, the Harvard Staff Model HMO and/or Harvard shall make such information (and such other information necessary to confirm such information) available in a manner satisfactory to Schering, for inspection and/or audit by Schering's representatives or its designated auditors during regular business hours. Schering agrees that any such inspections and/or audits shall be subject to the requirements of state and federal law regarding the confidentiality of medical and prescription records. *IN Accordance with the attached Staff Model Audit Rights*

### ARTICLE 4. OBLIGATIONS OF SCHERING:

4.1 **Discount.** Subject to compliance with all of the terms and satisfaction of all of the conditions set forth in this Agreement, and subject further to the provisions of Section 4.2 hereof, Schering shall provide Harvard with the discounted pricing set forth on Exhibit B for each of the Products dispensed by the Harvard Staff Model HMO for the treatment of Eligible Members. All discounts pursuant to this Agreement shall be based on Schering's Net Direct Price for Products.

4.2 **Price Increases.** Anything to the contrary herein notwithstanding, Schering hereby reserves the right in its sole discretion to increase the prices for the Products set forth on Exhibit B at any time to reflect or account for comparable increases made to its published Net Direct Price list.

**4.3 Eligibility for Discounts.** The Harvard Staff Model HMO's continued access to the Product discount for each Product is contingent upon Harvard complying with all of its obligations and responsibilities pertaining to such Product as detailed in this Agreement. Failure on the part of Harvard to fulfill its responsibilities or satisfy the conditions as set forth herein for a Product shall be grounds for Schering to reduce the discount for such Product to zero percent.

**4.4 Ineligibility for Discounts.** No discounts will be provided hereunder for:

- (a) any Product which is listed on the Formulary other than as set forth in this Agreement;
- (b) any units of Product for which Schering is obligated to pay rebates or provide discounts or other price reductions to any other party or governmental entity or with respect to any government health program including, without limitation Medicaid, Medicare or similar programs; and/or
- (c) any units of Product which are not used or dispensed as required by this Agreement.

**4.5 Excess Discounts.** If Schering reasonably determines as a result of an inspection and/or audit of Harvard (or the Harvard Staff Model HMO), any notice to Schering or other information that (i) Harvard has not satisfied all of the conditions in order to obtain the discounts set forth in this Agreement, (ii) any Product purchased hereunder shall have been sold, dispensed or administered for purposes other than the Harvard Staff Model HMO's own use as set forth in Section 3.2, or (iii) all or any part of the discounts previously granted by Schering to the Harvard Staff Model HMO hereunder are not required under this Agreement, then, in each such case, Harvard shall pay to Schering an amount equal to all or any portion of such excess discount granted hereunder with respect to the Product quantities purchased by the Harvard Staff Model HMO within thirty (30) days of being notified of such excess discount by Schering.

**4.6 Adjustment to Discounts.** Schering reserves the right to make adjustments to the discounted pricing available hereunder based on the introduction of generic competition, a new product entry, or implementation of a MAC (Maximum Allowable Cost) program. Should Schering cease marketing/manufacturing of any of the Products, or any package size of any of the Products, then this Agreement shall terminate with regard to the Product or such package size as the case may be.

## **ARTICLE 5. TERM AND TERMINATION:**

**5.1 Term.** The term of this Agreement shall commence on January 1, 2002. Unless sooner terminated as provided for herein, this Agreement shall remain in effect until December 31, 2002 (the "Term"). The Term may be extended only by a written amendment to this Agreement which is signed by both Harvard and Schering.

**5.2 Termination Without Cause/Termination for Cause.** This Agreement may be terminated by either party (a) without cause upon not less than 30 days' prior written notice to the other party, (b) if the other party is in breach of its obligations, representations or warranties set forth in this Agreement which breach is not cured within 10 days after receipt of written notice of such breach from the non-breaching party, (c) upon enactment of federal, state or local legislation, rules or regulations (collectively "Laws"), or the issuance of an interpretation of existing Laws, which, in the reasonable opinion of either party, could have a material adverse impact on such party and/or

any of its affiliates (economic or otherwise) if the Agreement remained in effect unmodified or (d) upon the insolvency, dissolution, liquidation, receivership or other similar reorganization of either party, whether voluntary or involuntary.

5.3 **Survival.** Termination of this Agreement for whatever the reason shall not affect the rights and obligations of the parties accruing prior to the effective date of termination.

#### ARTICLE 6. GENERAL PROVISIONS:

6.1 **Confidentiality:** Harvard shall maintain the confidentiality of all the terms and conditions of this Agreement throughout the duration hereof and for a period of two (2) years following the expiration or termination of this Agreement. It is agreed by both parties hereto that the confidentiality of an Eligible Member's personal identifying information and medical report must be protected. Harvard and Harvard Staff Model HMO are each prohibited from sending to Schering reports or other information which contain the names, address, telephone number or any other information that would, in the reasonable estimation of the parties hereto, enable Schering to establish the identity of an Eligible Member.

6.2 **Use of Health Plan Name:** Schering may not use the name of Harvard or the Harvard Staff Model HMO for any advertisement or publicity or any other reason unless such use has been reviewed and approved by Harvard prior to use or publication.

6.3 **Notices:** Any notice required or permitted hereunder shall be given in person or sent by first class, certified mail:

To Harvard at:

Harvard Pilgrim Health Care, Inc.-Harvard Staff  
Corporate Pharmacy Contracts-4<sup>th</sup> Floor  
93 Worcester Street  
Wellesley, MA 02481  
ATTN: Kenneth Kazarosian

To Schering at:

Schering Corporation  
2000 Galloping Hill Road  
K-5-3 A270  
Kenilworth, New Jersey 07033  
ATTN: Contracts & Pricing

or to such other address or to such other person as may be designated by written notice given from time to time during the term of this Agreement by one party to the other.

6.4 **Force Majeure:** Noncompliance with the obligations of this Agreement due to *force majeure*, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

6.5 **Non-Assignment:** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Provided, however, that either party may assign its duties, rights and interests under this Agreement, in whole or in part, to its subsidiaries or affiliates without such

prior written consent. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve either party of responsibility for the performance of any obligations which have already accrued. This Agreement shall inure to the benefit of and be binding upon each party, its respective successors and permitted assigns.

**6.6 Invalidity/Governing Law:** If any provision of this Agreement is finally declared or found to be illegal or unenforceable by a court of competent jurisdiction, both parties shall be relieved of all obligations arising under such provision, but if capable of performance, the remainder of this Agreement shall not be affected by such declaration or finding. This Agreement shall be governed by, and enforced and construed in accordance with, the laws of the Commonwealth of Massachusetts without giving effect to the conflicts of laws provision thereof.

**6.7 Indemnification:** Each party hereto ("Indemnifying Party") shall indemnify and hold harmless the other party from and against any claims, demands, costs or expenses (including reasonable attorney's fees) arising from or based upon the negligent or willful acts or omissions of the Indemnifying Party or its agents or employees under this Agreement, provided that the Indemnifying Party will have no liability to the other party under this Section 6.7 unless the Indemnifying Party is promptly notified in writing by the other party of all claims asserted and actions instituted against the other party and is given the opportunity to defend the same at its own cost and expense.

**6.8 Compliance With Laws:** Harvard shall, and shall cause the Harvard Staff Model HMO to, comply with all applicable laws in connection with this Agreement, including without limitation the reporting requirements and applicable provisions of 42 U.S.C. §1320a-7b (prohibiting illegal remuneration), by fully and accurately disclosing all discounts contained in this Agreement in any filings or claims made under any Federal healthcare program, including the Medicare and Medicaid programs.

**6.9 Entire Agreement; Amendment:** This Agreement, including the Exhibits attached hereto, contains a total integration of all rights, obligations and agreement of both parties with regard to the subject matter hereof. There are no extrinsic conditions, collateral agreements or undertakings of any kind regarding the subject matter hereof, and it is the express intentions of both parties that any and all prior or contemporaneous agreements, promises, negotiations or representations, either oral or written, relating to the subject matter hereof that are not expressly set forth herein are to have no force, effect, or legal consequences of any kind. This Agreement may only be amended by a writing signed by both parties hereto.

Schering Corporation:

By: Lawrence Ken-Kwofie  
 Title: Sr. Manager, Contracts & Pricing  
 Date: 4/3/02

Accepted for the (14) Harvard Pilgrim Health Care  
 Harvard Vanguard (HPHC) Health Center Pharmacies  
 Please allow bid pricing on a direct basis

Harvard Pilgrim Health Care, Inc.-Harvard Staff:

By: Kenneth J. Kazarian  
 Title: Kenneth J. Kazarian, M.S., R.Ph.  
Pharmacy Contracts Manager  
 Date: Harvard Pilgrim Health Care  
Pharmacy Operations  
Corporate Pharmacy Contracts  
93 Worcester Street  
Wellesley, MA 02481-0002

EXHIBIT A

INSTITUTIONAL RETURNED GOODS POLICY/RX

All returns of merchandise for credit over \$10,000 must have the prior approval of an authorized Representative and must be forwarded prepaid directly to Schering Corporation, 1011 Morris Avenue, Union, New Jersey 07083.

- a. Credit will be allowed on unopened and undamaged packages at current contract prices as of date of return (except merchandise sold on a special promotion offer, in which case the invoice price will apply) as follows:
  1. For prescription products not purchased on contract, returns made within 3 months after a price increase will be credited at the price prior to the price increase.
  2. Dated products will be given full credit up to one year after expiration. No credit will be issued for products returned more than one year after expiration.
  3. Based on Schering's judgement, packages that are partially filled or show other evidence of being opened, will receive partial credit.
- b. The above adjustments will appear on Schering's credit memoranda as follows:
  1. Items given full credit will show as individual line extension.
  2. Items currently in the line for which only partial credit has been allowed will be shown as separate line extensions.
  3. Old discontinued items receiving partial credit will be included under "Miscellaneous Product".
- c. Manufacturers are expressly forbidden (under the Federal Food, Drug, and Cosmetic Act) from returning expired dated items to customers. Such items returned to Schering will be destroyed. Schering also reserves the right to destroy without credit packages that are unfit or unsafe for sale or do not comply with applicable law.
- d. Consideration will be given to adjustments for losses suffered in a natural disaster (flood, hurricane, tornado, etc.) not covered by insurance. Your Schering representative will be glad to assist you in such emergencies.
- e. Schering representatives are not permitted to modify any of the above policies.
- f. Schering reserves the right to change, alter or amend this policy by giving (30) thirty days notice.

This returned goods policy does not apply to goods returned by persons other than the original wholesaler or hospital purchaser of the goods, or to goods which have been repacked in other than original Schering/Key containers.



**EXHIBIT B  
PRICING**

<u>NDC</u>	<u>COMPANY PRODUCT</u>	<u>SIZE</u>	<u>CONTRACT PRICE</u>	<u>FORMULARY STATUS*</u>
00085087905	CELESTONE PHOSPHATE INJ	5ML	\$ 14.50	LISTED ON FORMULARY
00085056605	CELESTONE SOLUSPAN SUSP	5ML	\$ 18.55	LISTED ON FORMULARY
00085094205	CELESTONE SYR .6MG 4OZ	4	\$ 33.00	LISTED ON FORMULARY
00085001101	CELESTONE TABLET PACK	100	\$ 29.34	LISTED ON FORMULARY
00085001105	CELESTONE TB .6MGX100	100	\$ 132.13	LISTED ON FORMULARY
00085051701	DIPROLENE AF CREAM	15GM	\$ 27.71	LISTED ON FORMULARY
00085051704	DIPROLENE AF CREAM	50GM	\$ 61.97	LISTED ON FORMULARY
00085063401	DIPROLENE GEL	15GM	\$ 27.71	LISTED ON FORMULARY
00085063403	DIPROLENE GEL	50GM	\$ 61.97	LISTED ON FORMULARY
00085096201	DIPROLENE LOTION	30ML	\$ 31.79	LISTED ON FORMULARY
00085096202	DIPROLENE LOTION	60ML	\$ 62.65	LISTED ON FORMULARY
00085057502	DIPROLENE OINTMENT	15GM	\$ 27.71	LISTED ON FORMULARY
00085057505	DIPROLENE OINTMENT	50GM	\$ 61.97	LISTED ON FORMULARY
00085085302	DIPROSONE CREAM	15GM	\$ 23.27	LISTED ON FORMULARY
00085085303	DIPROSONE CREAM	45GM	\$ 42.66	LISTED ON FORMULARY
00085002804	DIPROSONE LOTION	20ML	\$ 28.61	LISTED ON FORMULARY
00085002806	DIPROSONE LOTION	60ML	\$ 56.33	LISTED ON FORMULARY
00085051006	DIPROSONE OINTMENT	45GM	\$ 41.41	LISTED ON FORMULARY
00085052503	EULEXIN CAPSULES	UD	\$ 190.38	LISTED ON FORMULARY
00085052505	EULEXIN CAPSULES	500	\$ 898.06	LISTED ON FORMULARY
00085052506	EULEXIN CAPSULES	180	\$ 323.24	LISTED ON FORMULARY
00085022803	FULVICIN P/G 125MG	100	\$ 48.11	LISTED ON FORMULARY
00085065403	FULVICIN P/G 165MG	100	\$ 69.46	LISTED ON FORMULARY
00085050703	FULVICIN P/G 250MG	100	\$ 94.39	LISTED ON FORMULARY
00085035203	FULVICIN P/G 330MG	100	\$ 119.87	LISTED ON FORMULARY
00085094803	FULVICIN U/F 250MG	60	\$ 49.25	LISTED ON FORMULARY
00085094806	FULVICIN U/F 250MG	250	\$ 194.31	LISTED ON FORMULARY
00085049603	FULVICIN U/F 500MG	60	\$ 78.66	LISTED ON FORMULARY
00085049606	FULVICIN U/F 500MG	250	\$ 310.25	LISTED ON FORMULARY
00085000805	GARAMYCIN CR 1% 15GM	15	\$ 19.10	LISTED ON FORMULARY
00085006904	GARAMYCIN INJ 80MG 25X2ML	80	\$ 119.83	LISTED ON FORMULARY
	VLS			
00085460202	INSPIREASE	1	\$ 17.39	LISTED ON FORMULARY
00085460401	INSPIREASE MOUTHPIECE	144	\$ 621.42	LISTED ON FORMULARY
00085460402	INSPIREASE REPLACE M-PIECE	1	\$ 12.59	LISTED ON FORMULARY
00085460270	INSPIREASE REPLACEMENT BAG	144	\$ 301.32	LISTED ON FORMULARY
	BAGS			
00085460203	INSPIREASE RESERVOIR BAG	3 BAGS	\$ 9.41	LISTED ON FORMULARY
00085057102	INTRON A 10MIU	2ML	\$ 106.56	LISTED ON FORMULARY
00085118402	INTRON A 3MIU SOL	6 X 0.5ML	\$ 191.83	LISTED ON FORMULARY
00085064705	INTRON A 3MIU, Pak-3	6x1ML	\$ 191.83	LISTED ON FORMULARY
00085012002	INTRON A 5MIU	1ML	\$ 53.28	LISTED ON FORMULARY
00085119102	INTRON A 5MIU SOL	6 X	\$ 319.72	LISTED ON FORMULARY
		0.5ML		
00085117902	INTRON A 10MIU SOL	6 X 1ML	\$ 639.44	LISTED ON FORMULARY
00085111001	INTRON A 18 MIU	1ML	\$ 191.83	LISTED ON FORMULARY
00085116801	INTRON A 18MIU SOL	6MIU/1ML	\$ 191.83	LISTED ON FORMULARY
00085028502	INTRON A 25MIU	5ML	\$ 266.44	LISTED ON FORMULARY
00085113301	INTRON A 25MIU SOL	10MIU/1M	\$ 266.44	LISTED ON FORMULARY
		L		
00085053901	INTRON A 50MIU	1ML	\$ 532.86	LISTED ON FORMULARY
00085125401	INTRON A Solution Multidose Pens	6x10MIU/	\$ 639.44	LISTED ON FORMULARY
	10MIU	2ml		

00085124201	INTRON A, Solution Multidose Pens 3MIU	6x3MIU/.2 ml	\$	191.83	LISTED ON FORMULARY
00085123501	INTRON A, Solution Multidose Pens 5MIU	6x5MIU/.2 ml	\$	319.72	LISTED ON FORMULARY
00085119701	NASONEX NASAL SPRAY	17GM	\$	32.42	LISTED ON FORMULARY
00085330535	NITRO-DUR INST .1MG	30	\$	39.39	LISTED ON FORMULARY
00085331035	NITRO-DUR INST .2MG	30	\$	39.98	LISTED ON FORMULARY
00085331535	NITRO-DUR INST .3MG	30	\$	44.79	LISTED ON FORMULARY
00085332035	NITRO-DUR INST .4MG	30	\$	44.79	LISTED ON FORMULARY
00085333035	NITRO-DUR INST .6MG	30	\$	48.59	LISTED ON FORMULARY
00085081935	NITRO-DUR INST .8MG	30	\$	48.59	LISTED ON FORMULARY
00085028203	OPTIMINE TABS	100	\$	99.75	LISTED ON FORMULARY
00085082003	POLARAMINE TABS 2MG	100	\$	43.56	LISTED ON FORMULARY
00085061402	PROVENTIL INHALATION AEROSOL	17G	\$	21.98	LISTED ON FORMULARY
00085113201	PROVENTIL INHALATION AEROSOL	6.7G	\$	21.17	LISTED ON FORMULARY
00085061403	PROVENTIL INHALATION REFILL	17G	\$	19.68	LISTED ON FORMULARY
00085123602	REBETRON 1000/MDV	1000	\$	603.24	LISTED ON FORMULARY
00085124102	REBETRON 1000/PAK-3	1000	\$	603.24	LISTED ON FORMULARY
00085125802	REBETRON 1000/PEN	1000	\$	603.24	LISTED ON FORMULARY
00085123601	REBETRON 1200/MDV	1200	\$	666.57	LISTED ON FORMULARY
00085124101	REBETRON 1200/PAK-3	1200	\$	666.57	LISTED ON FORMULARY
00085125801	REBETRON 1200/PEN	1200	\$	666.57	LISTED ON FORMULARY
00085123603	REBETRON 600/MDV	600	\$	494.03	LISTED ON FORMULARY
00085124103	REBETRON 600/PAK-3	600	\$	494.03	LISTED ON FORMULARY
00085125803	REBETRON 600/PEN	600	\$	494.03	LISTED ON FORMULARY
00085046003	SOLGANAL SUSPENSION	10ML	\$	118.79	LISTED ON FORMULARY
00085001204	TRILAFON INJ 5MGAMP X100	100	\$	563.40	LISTED ON FORMULARY
00085104901	VANCENASE AQ DS	19G	\$	35.11	LISTED ON FORMULARY
00085064902	VANCENASE NASAL POCKETHALER	7G	\$	29.47	LISTED ON FORMULARY
00085073604	VANCERIL INHALER	16.8G	\$	29.08	LISTED ON FORMULARY

\* With respect to each Schering Product selected, non-formulary products shall be NDC blocked and/or in a third or higher tier with a co-pay arrangement differential of at least \$15.